

# Calendar No. 1052

91ST CONGRESS }  
2d Session }

SENATE

} REPORT  
No. 91-1047

## CAPT. NORMAN W. STANLEY

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JULY 30, 1970.—Ordered to be printed

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Mr. BURDICK, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H.R. 1728]

The Committee on the Judiciary, to which was referred the bill (H.R. 1728) for the relief of Capt. Norman W. Stanley, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to relieve Capt. Norman W. Stanley of liability of \$2,371.44 for overpayments of salary from September 18, 1961, through March 17, 1966, as the result of an administrative error in determining his entitlement to pay to be that of an officer with more than 4 years prior enlisted service.

#### STATEMENT

In its favorable report on the bill, the House Judiciary Committee set forth the facts of the case as follows:

The Air Force has advised the committee that it has no objection to relief as provided in the bill. The General Accounting Office in a report to the committee questions relief but stated that the decision as to whether relief should be extended by private bill was a matter for determination by the Congress.

Prior to being commissioned as an officer in the Air Force, Captain Stanley served as an enlisted man in the Army and

then in the inactive Air Force Reserve. After training as a member of the Reserve Officers Training Corps, he was commissioned a 2d lieutenant in the Air Force Reserve on June 16, 1961. He was ordered to extended active duty on September 18, 1961, and has been on continuous active duty since that date. He is now detailed to the National Aeronautics and Space Administration in Houston, Tex.

The overpayments referred to in this bill were made to Captain Stanley as the result of erroneously computing his base pay on the special pay scale authorized by the act of May 20, 1958, which applies to officers in pay grades O-1, O-2, and O-3, who have had over 4 years active enlisted service. This pay scale generally authorizes a higher rate of pay than is authorized for officers who have not had active enlisted service.

When the officer reported for active duty in 1961, his statement of service showed that he had served 2 years and nearly 10 months as an enlisted member of the Army, and more than 5 years as an enlisted member in the inactive Air Force Reserve. It was erroneously concluded that since he had more than 8 years enlisted service, he was entitled to have his pay computed on the special scale authorized by the act of May 20, 1958.

This error was not discovered until February 1967. At that time Captain Stanley had completed 14 years of service and his pay account was reviewed in connection with his longevity pay increase. His pay account was maintained by the Kelly Air Force Base in Texas and its personnel verified that since he had only 2 years, 9 months and 25 days on active enlisted service, it was not sufficient to meet the requirements for the special pay schedule authorized by the act of May 20, 1958. An audit of his account showed that he had received erroneous payments totaling \$2,371.44. As of October 1, 1969, \$571.44 had been collected from his active duty pay by reason of this indebtedness.

The Air Force noted in testimony presented before a subcommittee at a hearing on the bill on October 30, 1969, that Public Law 90-616 permits the waiver of recovery of erroneous payments made to Federal civilian employees when collection is against equity and good conscience. Under the Comptroller General's regulations implementing this law this criteria is met by a finding that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in waiving the recovery of any erroneous payments. In the determination of whether relief is merited, consideration is also given to whether the employee knew or should have known that he was being overpaid. This law is in effect a statement of congressional policy. The Air Force has further advised the committee that in determining its position on this bill, it has followed the criteria of the implementing regulations of Public Law 90-616. In this connection, the Air Force noted at the hearing that while Captain Stanley was aware that he had served on active duty as an Army man for slightly less than

3 years, he also had served as an enlisted member of the inactive reserve for more than 5 years. The Air Force determined that it is logical to assume that he was advised that since he had more than 8 years enlisted service he was entitled to the rates prescribed in the special pay schedule.

The Air Force concluded that under the circumstances he or any officer in his position would not have been aware that he was only entitled to those special rates when he had served over 4 years active enlisted service. The Air Force summarized its position at the hearing as follows:

"Collection of the claim against Captain Stanley would be against equity and good conscience and not in the best interest of the United States under the criteria prescribed pursuant to Public Law 90-616 for waiving claims arising from erroneous payments made to Federal employees. Therefore, the Air Force would now interpose no objection to favorable consideration of H.R. 1728."

In view of the foregoing and the position taken by the Air Force on the matter at the hearing and in its report, the committee recommends that the bill, as amended, be considered favorably.

The committee after a review of the foregoing, concurs in the action taken by the House of Representatives and recommends favorable consideration of H.R. 1728, without amendment.

Attached hereto and made a part hereof are (1) a letter dated November 12, 1969, from the Department of the Air Force; and (2) a letter dated October 3, 1968, from the Comptroller General.

DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., November 12, 1969.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 1728, 91st Congress, a bill for the relief of Capt. Norman W. Stanley.

The purpose of H.R. 1728 is to relieve Capt. Norman W. Stanley of San Jose, Calif., of liability to the United States in the amount of \$2,371.44. This amount represents overpayments of salary from September 18, 1961, through March 17, 1966, paid to him as a member of the United States Air Force as the result of administrative error. H.R. 1728 also (a) authorizes credit in the accounts of any certifying or disbursing officer for amounts for which liability is relieved; (b) authorizes the Secretary of the Treasury to pay Captain Stanley any amounts received or withheld from him because of the overpayments; and (c) limits agent or attorney fees to 10 percent of the amount to be appropriated by H.R. 1728.

Captain Stanley enlisted in the Army February 26, 1953. He was discharged from this enlistment after serving 2 years, 9 months, and 25 days on active duty. He immediately enlisted in the Inactive Air Force Reserve and served in that organization 5 years, 5 months, and

23 days. He was discharged from this enlistment June 15, 1961, to accept a commission as a second lieutenant (O-1) in the Air Force Reserve. He was ordered to extended active duty September 18, 1961, and has been on continuous active duty since that date. He accepted an appointment as a second lieutenant in the regular Air Force March 6, 1962. He is currently entitled to pay and allowances totaling \$1,089.93 a month.

Section 203, title 37, United States Code, provides special rates of pay for officers in pay grades O-1, O-2, and O-3, who have had over 4 years' active duty as enlisted members. With a few exceptions, these rates are greater than the rates for officers who have had 4 years' or less active enlisted service. From the date he was ordered to extended active duty as an officer, Captain Stanley's basic pay was computed on these special rates. On February 26, 1967, he completed 14 years' service for pay purposes and was entitled to a longevity pay increase. The accounting and finance officer at Kelly Air Force Base, Tex., questioned Captain Stanley's entitlement to basic pay computed on the special rates. A review of his personnel records by the Directorate of Personnel verified that the period from December 22, 1955, through June 15, 1961, he served in the Air Force Reserve was not "active enlisted service." The 2 years, 9 months, and 25 days he served on active duty as an Army enlisted member was not sufficient "active enlisted service" to entitle him to the special rates for officers with over 4 years' active enlisted service.

The Air Force Accounting and Finance Center made a complete examination of Captain Stanley's pay account. This examination showed that from the date he was ordered to extended active duty, his pay had been erroneously based on the special rates authorized for officers with over 4 years' active service as an enlisted member. It was established that from September 18, 1961, through March 17, 1966, he received overpayments totaling \$2,371.44. (Since the rates of pay for a captain with over 12 years' service are the same for officers who have had over 4 years' active enlisted service and for officers who have had less than 4 years' active enlisted service, no overpayments were made after he was promoted to captain March 18, 1966.)

Captain Stanley was advised of the overpayments and afforded an opportunity to provide information to substantiate additional active enlisted service. Since he was unable to furnish such information, collection of the overpayments from his active duty pay was initiated effective July 1, 1968. If collection at the rate of \$30 a month continues, the overpayments will be repaid in 1974.

The overpayments made to Captain Stanley resulted from administrative error which remained undetected for over 6 years. He was no doubt aware he had served on active duty as an enlisted member for less than 3 years and likewise was aware he had served as an enlisted member in the Inactive Reserve for more than 5 years. It is logical to assume he was advised that since he had more than 8 years' enlisted service, he was entitled to the rates prescribed in the special pay scale. It cannot be logically assumed, however, that he, or any officer in his position, was or should have been aware that he was entitled to these special rates only if he had over 4 years' active enlisted service.



In view of the above, the Air Force interposes no objection to favorable consideration of H.R. 1728.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

SPENCER J. SCHEDLER,  
*Assistant Secretary of the Air Force.*

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., October 3, 1968.*

B-165234.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter of September 10, 1968, requesting our views on H.R. 19583, a bill for the relief of Capt. Norman W. Stanley.

The bill would relieve Captain Stanley, U.S. Air Force of his liability to the United States in the amount of \$2,371.44, representing overpayments of salary—active duty pay—from September 18, 1961, through March 17, 1966, paid to him as the result of an administrative error and without fault on his part. Also, the bill would relieve the certifying or disbursing officer of liability to the extent of the overpayment and would authorize and direct the Secretary of the Treasury to pay to Captain Stanley an amount equal to the sum of any amounts received or withheld from him on account of such indebtedness.

An examination of Captain Stanley's statement of service (DD Form 13) dated February 13, 1968, shows that he enlisted in the United States Army on February 26, 1953, and served on active duty until discharged on December 21, 1955. On December 22, 1955, he enlisted in the United States Air Force Reserve and continued in that status without performing any active duty until he was discharged on June 15, 1961, to accept a commission in the Air Force Reserve. He has been serving on active duty as an officer since September 18, 1961. Thus, on the basis of the statement of service, the officer had only 2 years, 9 months and 26 days' active enlisted service when he entered on active duty as an officer on September 18, 1961.

Under the provisions of 37 U.S.C. 203(a) (formerly 37 U.S.C. 232(a)), a special rate of basic pay is authorized to commissioned officers in pay grades O-1 to O-3 (lieutenants and captains) who have been credited with "over 4 years' active service as enlisted members." As indicated above, when Captain Stanley entered on active duty as an officer on September 18, 1961, he had only 2 years, 9 months and 26 days' active enlisted service. An examination of his pay record shows, however, that when he entered on active duty he was erroneously paid at the higher special rates authorized for those officers who have been credited with over 4 years' active service as an enlisted member and that he continued to be paid on such basis until March 17, 1966. Our computation of his pay on the basis of the proper pay rates prescribed under the above cited law for officers not having 4 years' active service

as an enlisted member shows that he was overpaid the total of \$2,371.44, the amount stated in H.R. 19583 and administratively determined to be due, for the period September 18, 1961, to March 17, 1966.

The record further indicates that the indebtedness has been entered on the officer's current military pay record for collection at the rate of \$30 a month effective July 1, 1968. The record indicates that as of August 31, 1968, \$81.41 has been withheld from amounts due the officer.

We do not view with favor legislation such as H.R. 19583 which grants preferential treatment to an individual over other individuals similarly situated. While the overpayment apparently resulted from the erroneous inclusion of inactive enlisted service in determining the rate of pay due Captain Stanley as an officer, other individuals have been required to refund overpayments received because of erroneous service credits. On the record before us, we find no special equity in Captain Stanley's case which would warrant our recommending favorable consideration of the bill. The question of whether relief should be granted in this case, however, is, of course, for determination by Congress on the basis of the facts and circumstances presented.

Sincerely yours,

ROBERT F. KELLER,  
*Acting Comptroller General of the United States.*

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